an easement of navigation in the stream, and cannot appropriate any part of it for his own exclusive use, and consequently cannot charge for the use of it: *Moore* v. *Jackson*, *supra*.

9. (*a*) In *Reading Railroad Co.* v. *Ervin*, 7 Weekly Notes of Cases 73, it was left to the jury to say whether the defendants were guilty of negligence in not having cap-logs on their wharf; but in *Kennedy* v. *Mayor*, 73 N. Y. 365, the court said that a series of cases had decided that the defendants were charged with keeping the wharf in safe repair, and consequently the court would assume that it was the defendant's duty to have their wharf guarded by cap-logs.

In *Simpson* v. *Neill*, 7 Weekly Notes of Cases 85, A. owned a portion of a wharf with a pier extending into the river, and B. owned the remaining part of the wharf with a pier parallel with and at the distance of some sixty feet from A.'s pier, with a dock between the piers. *Held*, that these piers were adjoining wharves, and within the meaning of the Act of Assembly April 8th 1851, which used the words "adjoining wharves."

(*c*) A dry-dock floating in a navigable river, and moored to a wharf, is a marine structure, like any ordinary vessel, and is subject to the admiralty jurisdiction: *Tug Ceres*, 7 Weekly Notes of Cases 576.

(*d*) In the absence of any agreement between the parties with regard to wharfage, the wharfinger is entitled to just and reasonable compensation for the use of his wharf: *Ex parte Easton*, 5 Otto 68.

(*e*) In *Contractors of Union Wharf* v. *Steamer Starin*, 45 Conn. 585, a portion of a dock alongside a pier was filled up, and part of the pier used for some time as a public highway: *Held*, that though this part of the pier was used as a highway, yet as long as it was used also as a landing-place for goods, it was still for that purpose a wharf, and goods landed on it were liable for wharfage.

10. (*a*) One cannot, by any use of a navigable dock, gain such a right of way therein as will enable him to maintain a claim for damages, for its obstruction by a railway, whereby vessels are prevented from approaching his private dock: *Thayer* v. *Railroad Co.*, 125 Mass. 253.

It was held in the principal case that the owner of a wharf has not such a property in a dock alongside his wharf, as will allow him to maintain an action for the use and occupation of the same.

ARTHUR BIDDLE.

Supreme Court of New Jersey.

STATE EX REL. FERRY v. WILLIAMS.

Every person is entitled to the inspection of documents of a public nature, provided he shows the requisite interest therein.

It is not necessary that a suit should be pending before such inspection will be granted. It is sufficient, if the person seeking inspection has such interest in a specific controversy as will enable him to maintain or defend an action, for which the public documents will furnish competent evidence or necessary information.

It is not essential that he should be legally capable of maintaining or defending an action in his own private behalf; but it will entitle him to inspection, if he may act in such suit as a representative of a common or public right.

Courts may, in their discretion, at the instance of private persons, act by mandamus, certiorari or *quo warranto*, for the redress or prevention of public wrongs by

public bodies and officers, whose official sphere is confined to some political division of the state, whenever the applicant is one of the class of persons to be most directly affected in their enjoyment of public rights, and the public convenience will be subserved by the remedy desired.

A citizen desiring to ascertain whether the provisions of the city charter in regard to licensing saloons have been observed, with a view of securing due obedience to the law, is entitled to an inspection of the papers which are made by law the basis for the issue of licenses.

On application for mandamus.

By a supplement to the charter of the town of Orange, approved March 30th 1875 (Pamph. L., p. 399, § 8), it was provided that no person should be allowed to sell ale, &c., within the city limits, unless he were first licensed by the collector of taxes, had paid a license fee and had filed with the collector a letter of recommendation, signed by six legal voters and freeholders, who had signed no other recommendation within a year, to the effect that the applicant was of good moral character and of good repute for temperance. The relator in this case, a citizen of Orange, believing that the requirements of this law as to these letters of recommendation were not obeyed, and desiring, with other citizens, to secure a due observance of its provisions, applied to the defendant, the collector of taxes, for an inspection of the letters on which then existing licenses had been granted. The defendant refused his request, and the common council, on appeal to them, approved of this refusal, and instructed the defendant to persist therein. The relator then brought this petition for a mandamus to enforce his right of inspection.

J. H. Stone, for the relator.

J. L. Blake and *J. Vanatta*, contra.

The opinion of the court was delivered by

Dixon, J.—Whether the relator has the right claimed or not must be decided by general principles, since the statutes of the state are silent on the subject. The documents in question are of a public nature, and the rule is that every person is entitled to the inspection of such instruments, provided he shows the requisite interest therein. And as Lord Denman remarks in *Rex* v. *Justices of Staffordshire*, 6 Ad. & E. 84, the court is by no means disposed to narrow its authority to enforce by mandamus the production of every document of a public nature in which any citizen can prove himself to be interested. For such persons, indeed, every officer

appointed by law to keep records ought to deem himself for that purpose a trustee.

The relator asserts no interest to be subserved by an inspection of these letters, except that common interest which every citizen has in the enforcement of the laws and ordinances of the community wherein he dwells.

In England, the occasions which generally have required the exercise of the power of the court to enforce the inspection of public documents, have been those where a party has sought evidence for the prosecution or defence of his rights in pending litigation. In such cases, when the custodian of the documents was a party in the cause, the court usually intervened by rule, otherwise by mandamus. But the existence of a suit was not a *sine qua non* for the exertion of the power. In *Rex* v. *Lucas et al.*, 10 East 235, a mandamus was sought to compel the steward of the manor to permit one claiming certain copyhold lands within the manor to inspect the court-rolls and take copies. The lord, claiming himself to be the owner of the lands, resisted, on the ground that there was no cause depending; but the Court of King's Bench granted the writ, notwithstanding the opinion before expressed in *Rex* v. *Allgood*, 7 T. R. 746, Lord ELLENBOROUGH saying: "I do not know why there should be any cause depending in order to found application of this sort. This is not the impertinent intrusion of a stranger, but the application of one who is clearly entitled to the copyhold, unless there be a conveyance of it by those under whom he claims; he may, therefore, well require to see whether there appears upon the rolls to be any such conveyance." So, in *Rex* v. *Tower*, 4 M. & S. 162, on a controversy, but without suit, between a tenant of the manor and the lord, as to cutting underwood, the court granted a mandamus to inspect the court-rolls so far as related to that subject. Likewise in *Rex* v. *Justices of Leicester*, 4 B. & C. 891, a mandamus was granted that certain ratepayers be allowed to inspect and take copies of the proceedings and documents relating to the parish rates, although no suit was pending; and while this case is disapproved in *Rex* v. *Vestrymen of St. Marylebone*, 5 Ad. & E. 268, and overruled in *Rex* v. *Justices of Staffordshire*, 6 Id. 84, yet in neither case is it suggested that it was erroneous because no action had been brought. This disapprobation turns upon the principle that the ratepayers had no interest to be subserved by the inspection, since no information to be obtained from the documents

could aid them in the enforcement or protection of any lawful claim; Lord DENMAN saying, in the case last cited, that the subject-matter was not one which the ratepayer could bring before the court as a litigant, and hence there was not that direct and tangible interest which is necessary to bring persons within the rule on which the courts act in granting inspection of public documents. In *Rex* v. *Merchant Tailors' Co.*, 2 B. & Ad. 115, although a mandamus was refused to members of the company seeking inspection of *all* the records, books, papers and muniments of the company, because of the generality of the application, it was conceded by all the judges that if the application had been limited to some legitimate and particular purpose in respect of which the examination became necessary, it would have been allowed, and there was no rule that to warrant an order to inspect corporation documents there must actually have been a suit instituted.

It seems, therefore, to be sufficient if the person seeking inspection has such an interest in a specific controversy as will enable him to maintain or defend an action, for which the public documents will furnish competent evidence or necessary information. Nor is it essential that his interest should be private, capable of sustaining a suit or defence on his own personal behalf. It will justify his demand for inspection, if he may act in such suit as a representative of a common or public right. The cases in England, in which a private subject has secured inspection of public or *quasi* public documents on the ground of being such a representative, are comparatively rare, because of the prevalence of the rule that the civil remedy for wrongs by which no private rights were peculiarly affected, was usually in the name of the attorney-general, acting on behalf of the public. But whenever the subject was, by reason of his relation to the common interest, permitted to litigate for its protection, the right of inspection was fully secured to him. Thus, in *Rex* v. *Shelley*, 3 T. R. 141, where some of the burgage tenants were testing by *quo warranto* the right of the defendant to be a burgess, a full inspection of the court-rolls, not limited to the evidence of their own titles, was granted them. In *Rex* v. *Babb*, 3 T. R. 579, on an information by three aldermen to inquire into the right of Woolmer to be mayor of Great Grimsby, the relators had a rule for the inspection and copies of all the public books, records and papers of the borough of Great Grimsby regarding the subject in dispute. And in the cases of *Rex* v. *Justices of Leicester*, *Rex*

v. *Marylebone*, *Rex* v. *Justices of Staffordshire*, and *Rex* v. *Merchant Tailors' Co.*, already cited, the applicants for inspection had no other interest in the matters involved than such as they shared in common with all the rate-payers of the parish or members of the corporation, but that was not even suggested as a ground for refusing the *mandamus*.

And indeed, upon the reason of the thing, if inspection of public documents will be granted to a private individual when he is seeking merely the furtherance of his own private ends, *a fortiori* should it be accorded to him when he is aiming at the accomplishment of a public purpose, as to which the courts will assist his design through a suit instituted by him in the public behalf.

If, therefore, we would recognise the right of the applicant to maintain a suit on behalf of the public, because of any such violation of or non-compliance with the charter on the part of the collector of taxes, as the relator seeks to discover through the inspection desired, then we should also recognise his right to the inspection, and enforce it by proper process.

The English rule, that the redress of wrongs arising from usurpations and unlawful acts of public officers, which do not directly affect private persons or property, must be attained through the suit of the attorney-general, has not been generally followed in the practice of this state. Indeed it is not uniformly observed in the mother country. Judge COWEN, in *People* v. *Collins*, 19 Wend. 56, refers to several instances of its infringement. Naturally, from the more democratic character of our institutions, greater relaxation of the rule would be likely to obtain among us; and accordingly we find that from an early period our courts have exercised a large discretion in annulling the illegal acts of municipal bodies and officers, and compelling the performance of their public duties at the instance of citizens and taxpayers who were not otherwise interested in the controversy than was the rest of the community, while the cases in which the attorney-general has interfered for such purposes are quite infrequent. In *State*, *Kean*, *pros.*, v. *Bronson*, 6 Vroom 468, it is said that in this state the rule is modified only to the extent that a taxpayer may bring into question the action of municipal authorities, if such action will subject him to a tax in common with his fellow-citizens; and in *State*, *Montgomery*, *pros.*, v. *Trenton*, 7 Vroom 79, this limit of modification was adopted by a refusal of the court to set aside, at the instance of

landowners in the neighborhood, an illegal ordinance granting permission to lay a railroad across a street. Undoubtedly most of the cases where private citizens have sued to prevent or redress public wrongs of municipal authorities, are those involving conduct which would lead to expenditure of public moneys, and so increase taxation, but this has arisen rather from the usual character of such wrongs than from any reason upon which a remedy would be afforded. There are certainly instances of interference by the courts with official action affecting only public rights at the suit of private persons, where questions of taxation were not at all concerned, or were so remote from the matters complained of as not to be noticed in the decision.

Thus, in *State* v. *Justices of Middlesex*, Coxe 244 (1794), the Supreme Court, on a *certiorari* prosecuted by some inhabitants of the county, set aside an election to fix a site for building a county court house, when the sole ground of complaint was unfairness in conducting the election. In *State* v. *New Brunswick*, Coxe 393, (1795), the court allowed a *certiorari* to test the validity of a municipal ordinance, at the instance of a citizen, without proof that he was or would be peculiarly affected by it. In *State* v. *Griscom et al.*, 3 Halst. 136 (1825), a mandamus was granted to a private applicant, directing a township committee to assign to the overseers of highways in the township, their several divisions of a public road then recently laid out; and in *State* v. *Holliday*, 3 Halst. 205, the same relator obtained a writ directing the overseer to whom the road had then been assigned to open it for public use. In *State* v. *Snedeker*, 1 Vroom 80 (1862), a citizen sued out a *certiorari* to set aside the action of surveyors vacating a highway, and VREDENBURGH, J., said: "Every citizen is interested more or less, in every highway, and has a right to submit any questions affecting such interests to the court." In *State* v. *Common Council of Rahway*, 4 Vroom 110 (1868), the council was ordered to appoint a special election to fill a vacancy in the board, on a mandamus issued at the relation of a resident of the ward unrepresented. In *State ex rel. Mitchell* v. *Tolan*, 4 Vroom 195, it was decided that an inhabitant of a city has sufficient interest to support the right to file an information in the nature of *quo warranto*, testing the legality of an election of aldermen.

These cases seem to indicate that with us the exception to the rule is extended so far as to justify this court in acting by manda-

mus, *certiorari* or *quo warranto*, at the instance of private persons, for the redress or prevention of public wrongs by public bodies and officers, whose official sphere is confined to some political division of the state, whenever the applicant is one of the class of persons to be most directly affected in their enjoyment of public rights, and the public convenience will be subserved by the remedy desired. The general indifference of private individuals to public omissions and encroachments, the fear of expense in unsuccessful and even in successful litigation, and the discretion of the court, have been, and doubtless will continue to be, a sufficient guard to these public officials against too numerous and unreasonable attacks.

The present controversy relates to a matter of public police of universally recognised importance, concerning a traffic which, in the opinion of many, largely adds to the disorders of society and the burdens of taxation; and it cannot be alleged that private interests are not as much involved in its due regulation by law as they are in other public questions about which heretofore individuals have maintained a standing in this court. Hence, I think the relator, in his capacity of inhabitant and taxpayer in the city of Orange, has such an interest in the proper observance of the provisions of the city charter for licensing saloons, that he may, under certain circumstances, litigate for its protection, and, in order to ascertain whether those circumstances exist, being actuated by such motives as are disclosed in the present application, he is entitled to an inspection of the letters of recommendation filed with the collector of taxes, upon which pending licenses were granted.

Let the mandamus prayed for be awarded.

The refusal of municipal as well as private corporations to permit the inspection of their records has been a frequent method adopted by the controlling element to delay or defeat the rights of other corporators or individuals. Fortunately, however, an appeal to the law has uniformly resulted in an affirmance of the right in favor of any person interested in the subject-matter of the controversy, as affected by a denial of the right.

Judge DILLON, in his work on Municipal Corporations, states the following points as having been ruled concerning the right to inspect corporate documents and papers: "Every corporator has a right to inspect all the records, books and other documents of the corporation upon all proper occasions, and if, when application for that purpose, the officer who has their custody refuses to show them, the court will grant a mandamus to enforce his right. One who has a prima facie title to a corporate office has a right to inspect such documents as relate to that title, and may obtain a mandamus for this purpose before any suit has been instituted. A corporator has a right to inspect the documents, to obtain information as to his rights, whether in dispute with a stranger or

the corporation itself, or any of its members:" § 240; also § 684. "In this country the records, public books, and by laws of municipal corporations, are of a public nature, and if such a corporation should refuse to give inspection thereof to any person having an interest therein, or perhaps, for any proper purpose to any inhabitant of the corporation, whether he had any special or private interest or not, a writ of mandamus would lie to command the corporation to allow such inspection, and copies to be taken, under reasonable precaution to secure the safety of the originals."

So High, in his work on Extraordinary Remedies, says, § 83, "So this writ (mandamus) will go commending a recorder of deeds to permit access to his books and records by a person properly entitled thereto."

The register of the city and county of New York, having as such the custody of the records of conveyances in that county and the indexes thereto, was in the habit of charging a fee of five cents as a condition upon which alone he would allow any person to examine the indexes to the records, and upon the plaintiffs attempting to examine one of the indexes without such payment, the register forcibly took it from him, and refused to allow him to inspect it until such five cents were paid. Thereupon the plaintiff paid this sum, and brought his action to recover back the amount. The Court of Common Pleas held in *Townsend v. Dyckman*, 2 E. D. Smith 224, that no fees were allowed by law for a search made by any other person than the register himself and his assistants, and that the plaintiff had a right to make the examination desired without any charge whatever; that the payment was not a voluntary payment, but one made under compulsion, and was an abuse of official power, and consequently affirmed the judgment of the court below for the plaintiff, with costs. The Supreme Court of the same state also held in *Townshend* v. *The Register of Deeds of New York*, 7 Howard, Prac. R. 318, that any person, so desiring, had the right to examine the books of records without charge, and that this should be accorded not as a privilege, nor a favor, but as a matter of absolute right.

The same court subsequently held in *The People* v. *Cornell*, 47 Barb. 329, that any member of a municipal corporation had the right, from the mere fact of being a corporator, to a general inspection of the books and records of the corporation, and to take copies thereof without charge; and that the only restriction which the officers could make, were to prescribe reasonable hours for such inspection, and such reasonable general rules as should be necessary to preserve the records from loss or mutilation.

In Greenl. on Ev., § 474, the rule is laid down that the books of a corporation are public with respect to its members, but private with respect to strangers, and that a rule for their inspection will be granted, of course, on application of a member, where such inspection is shown to be necessary.

It is sometimes contended that although the records of deeds, mortgages, &c., are public records, and as such, open to inspection, yet, the indexes thereto are not, and that the authorities may therefore establish conditions to their examination. Such a claim does not, however, appear to be sustained by any statute or reported decision, but on the contrary, the uniform principle appears to be that all books which the recorder is by law required to keep are necessarily public records, and as such, are open to public inspection.

JOSIAH H. BISSELL.

Chicago, February 1880.